

Remarks

Applicants submit this Fourth Supplemental Preliminary Amendment in response to the Notification of Defective Response (mailed October 24, 2006). Applicants are also submitting herewith a Substitute Sequence Listing via EFS-Web 1.1. The Substitute Sequence Listing is being submitted to correct the errors identified in the "Raw Sequence Listing Error Report" (dated August 28, 2006) (referred to herein as the "Error Report") (copy submitted herewith), which Error Report was prepared by the Biotechnology Systems Branch of the Scientific and Technical Information Center ("STIC") of the U.S. Patent and Trademark Office ("USPTO"). Applicants are also submitting herewith "Statements in Accordance with 37 C.F.R. § 1.825," and assert that no new matter is being added by way of the Substitute Sequence Listing.

To clarify the record, applicants wish to point out that there was a significant delay in applicants' receipt of the Error Report from the USPTO. In particular, it was not until November 15, 2006, and only after applicants' repeated requests for clarification of the errors, that applicants received the Error Report from the USPTO. A timeline of relevant dates is provided below.

On October 24, 2006, the USPTO mailed the outstanding Notification of Defective Response to applicants. The Notification provided a one-month deadline (non-extendible) for response. The Notification was not received by applicants until October 27, 2006. There were no attachments included with the Notification, and the Notification merely alleged that "[t]he paper or compact disc copy of the 'Sequence Listing' is not the same as the computer readable form of the 'Sequence Listing' as required by 37 CFR 1.821(e)."

On October 27, 2006, applicants (via Patricia Knisley of Nixon Peabody LLP) left a telephone message for Anita Johnson of the USPTO, requesting further clarification of the errors allegedly contained in the previously submitted sequence listing (i.e., the sequence listing submitted September 29, 2006).

On October 31, 2006, Ms. Johnson faxed Ms. Knisley a one-page document entitled "CRF Problem Report." The CRF Problem Report indicated that the previously submitted sequence listing was processed by STIC on August 14, 2006. The CRF Problem Report identified the nature of the problem to be that the CRF was "not saved in ASCII text." No further errors were indicated.

On November 1, 2006, Ms. Knisley left a telephone message for Mark Spencer of STIC, requesting further clarification of the errors in the previously submitted sequence listing.

On November 14, 2006, Mr. Spencer faxed Ms. Knisley a copy of the Error Report. However, this copy was not completely legible due to fax transmission problems.

On November 15, 2006, Mr. Spencer faxed another copy of the Error Report to Ms. Knisley. It was not until this copy was received that applicants could see the errors that needed to be corrected and appreciate the scope of the corrections that needed to be made.

Applicants were given only a one-month deadline (non-extendible) for responding to the outstanding Notification of Defective Response. Despite the delay in receiving the Error Report, and despite the fact that the sequence listing included a large number of sequences (i.e., 31,933 sequences), applicants hereby submit the Substitute Sequence Listing as a good faith effort to correct all the errors identified in the Error Report.

In view of all of the foregoing, applicants respectfully submit that this case is complete and ready for examination by the USPTO, and such examination is earnestly solicited. However, if the USPTO detects any additional errors in the Substitute Sequence Listing, applicants respectfully request that the STIC error report be forwarded to applicants along with any further notifications of defective response.

Respectfully submitted,

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